

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON DIVISION
DOCKET NO. 05-11682

L & T YACHT SALES, INC.)
PLAINTIFF,)
)
VS.)
)
POST MARINE CO., INC.)
DEFENDANT)
)

PLAINTIFF, L & T YACHT SALES, INC.'S OPPOSITION TO DEFENDANT

POST MARINE, INC.'S 'S MOTION TO TAX COSTS

Now comes the Plaintiff, L & T Yacht Sales, Inc. and hereby opposes the Defendant, Post Marine Co., Inc.'s Motion to Tax Costs. As grounds therefore the Plaintiff states that the costs sought are for depositions and constable fees. A court has discretion to award costs other than those enumerated in 28 U.S.C. Section 1920, but must exercise that discretion "sparingly." *O'Ferral v. Trebol Motors Corp.*, 45 F.3d 561, 564 (1st Cir.1995). Deposition costs are within the discretion of the court and not taxable as a matter of right. *Johnson v. Baltimore & O. R. Co.*, 65 F.R.D. 661 (1974). When allowed, the court should allow as costs the cost of one transcript for each deposition only, but not items for the convenience of counsel such as minusccripts, keyword indices, ASCII disks, exhibits, and postage and delivery. *Burton v. R.J. Reynolds Tobacco Co.*, 395 F.Supp.2d 1065, 1080 (D.Kan.2005). The court's discretion should also be used particularly to deny all costs (constable fees of \$296.00 and deposition costs \$168.00)

associated with the deposition of Lisa Kane. She was not designated by Plaintiff as a witness, called by either party at trial and her deposition was not used at trial. See *Kehm v. Proctor & Gamble Co.* 580, S. Supp. 890 (1982) (necessary deposition for purposes of 28 USC 1920(2) are depositions used in trial and depositions of persons called as witnesses during trial).

Respectfully submitted,
The Plaintiff,
By its Attorneys,

/s/ John E. Zajac

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CERTIFICATE OF SERVICE

I, John E. Zajac, Esquire this 14th day of March, 2008 have given notice of the within Plaintiff, L & T Yacht Sales, Inc.'S Opposition To Defendant Post Marine, Inc.'S 'S Motion to Tax Costs, by e-mail service, via the Court's CM/ECF system which sent notification of such filing to Howard M. Brown, Esquire, Bartlett Hackett Feinberg P.C., 155 Federal Street, 9th floor, Boston, MA 02110 and by email to Michel O. Weisz, Esquire, BERGER SINGERMAN, 200 South Biscayne Boulevard, Suite 1000, Miami, FL 33131.

/s/ John E. Zajac

John E. Zajac, Esquire